

IN THE UNITED STATES DISTRICT COURT
FOR THE DELAWARE DISTRICT

R.W., A Minor, individually, by and through
his parent and natural guardian SARAH WILLIAMS
and SARAH WILLIAMS, individually,
PLAINTIFFS,

V.

THE DELAWARE DEPARTMENT OF
EDUCATION; VALERIE WOODRUFF;
personally and in her official capacity as
the Secretary of Education for the State of
Delaware; THE STATE OF DELAWARE BOARD
OF EDUCATION; and JOSEPH PIKA, Ph.D.;
JEAN ALLEN; RICHARD M. FARMER, JR.;
MARY GRAHAM, ESQ.; BARBARA RUTT;
DENNIS SAVAGE; CLAIRBOARNE D.
SMITH; ANNE CASE; VALERIE WOODRUFF;
personally and in their official capacity as Members
of the State Board of Education; and
THE CHRISTINA SCHOOL DISTRICT; JOSEPH J.
WISE, personally and in his official capacity as the
Superintendent of the District; DAVID SUNSTROM,
personally and in his official capacity as the Assistant
Superintendent of the District; SANDRA COUNTLEY
personally and in her official capacity; SHARON
DENNY, personally and in her official capacity;
FREEMAN WILLIAMS, personally and in his official
capacity; THE CHRISTINA SCHOOL DISTRICT :
SCHOOL BOARD; BRENDA PHILLIPS;
JAMES DURR; GEORGE EVANS, ESQUIRE;
BEVERLY HOWELL; CONSTANCE MERLET
JOHN MACKENZIE, CECILIA SCHERER; and
JOSEPH WISE; all personally and in their official
capacity as Members of the CHRISTINA
SCHOOL DISTRICT.

DEFENDANTS.

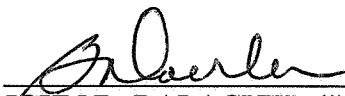
C.A. NO. 05-CV-00662

**DEFENDANTS THE CHRISTINA SCHOOL DISTRICT BOARD OF EDUCATION,
JOSEPH J. WISE, DAVID SUNSTROM, SANDRA COUNTLEY, SHARON DENNY,
FREEMAN WILLIAMS, BRENDA PHILLIPS, JAMES DURR, GEORGE EVANS,
BEVERLY HOWELL, CONSTANCE MERLET, JOHN MACKENZIE AND CECILIA
SCHERER'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Plaintiffs in this matter have filed a Complaint which alleges that the Christina School District Board of Education, its Board Members, and various employees discriminated against R.W. and deprived him of constitutional rights with respect to the School District's decision to transfer R.W. to an alternative school after R.W. punched another student in the face. For the reasons stated in the brief filed by the Christina School District defendants contemporaneously with this motion, the Court should dismiss Plaintiffs' Complaint. The Court should dismiss the Complaint because the School District defendants are entitled to either absolute or qualified immunity, Plaintiff's complaint fails to identify similarly situated individuals in a non-protected class, the Due Process Clause is not implicated in school transfer decisions, and supervisory liability claims cannot be brought under 42 U.S.C. § 1983. In addition, because Plaintiff's Complaint is without merit on the face of the Complaint, the Court should award the School District defendants attorneys fees and costs pursuant to 42 U.S.C. § 1988(b), and the Court's rules.

Respectfully submitted,

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 Countley, Sharon Denny, Freeman
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 Durr, George Evans, Beverly
 Howell, Constance Merlet, John
 Mackenzie and Cecilia Scherer*

Date: January 17, 2006

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DEFENDANTS.

C.A. NO. 05-CV-00662

CERTIFICATE OF SERVICE

I, William L. Doerler, Esquire, do hereby certify that on this 17th day of January, 2006 one (1) copy of the foregoing were **DEFENDANTS THE CHRISTINA SCHOOL DISTRICT BOARD OF EDUCATION, JOSEPH J. WISE, DAVID SUNSTROM, SANDRA COUNTLEY, SHARON DENNY, FREEMAN WILLIAMS, BRENDA PHILLIPS, JAMES DURR, GEORGE EVANS, BEVERLY HOWELL, CONSTANCE MERLET, JOHN MACKENZIE AND CECILIA SCHERER'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM** delivered via E-File and Serve, and First Class Mail, postage prepaid upon:

Patricia McHale O'Neill
Patricia M. O'Neill, Esq.
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Craig Romond Fitzgerald
Department of Justice
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